IDEA 2004 Key Issues at a Glance

Additional information is available on the Utah State Office of Education (USOE) Website www.schools.utah.gov

Copies of this document may be requested from the Utah Parent Center.

The following highlights of changes in the 2004 Reauthorization of the Individuals with Disabilities Education Act are provided in order to inform parents, educators, administrators, and other stakeholders of the changes taking effect on July 1, 2005. The IDEA 2004 citations and current Utah Special Education Rules references follow each major heading.

Early Intervening Services (613(f)) (new)

- LEAs may choose to *spend up to 15% of federal funds to develop and implement coordinated early intervening services* for any student in need of academic and behavior support for classroom success in an effort to prevent the need for special education services.
- LEA procedures for addressing disproportionate representation of students of racial and ethic minorities in Special Education include mandatory early intervening services.

Evaluation and Eligibility (614(a)) (II.V-G)

- Initial evaluation must be completed within 60 calendar days of receipt of parental consent.
- Re-evaluation time line remains at least once every three years unless parents and LEA agree that existing data are sufficient to determine continuing eligibility.
- SEA may not require LEAs to consider whether student has a severe discrepancy between achievement and intellectual ability as part of eligibility under specific learning disabilities. LEAs may establish a process to determine if child responds to scientific, research based intervention (Response to Intervention–RTI) as part of their evaluation procedures.

Individualized Education Program (IEP) (614(d)) (III.E-I;) IEP contents

- IEP contains present levels of academic achievement and functional performance (PLAAFP).
- IEP contains statement of measurable annual goals including both academic and functional goals.
- Benchmarks or short term objectives are required only for children who take alternate assessments aligned with alternate achievement standards.
- Periodic reports on progress toward IEP goals must be provided to parents.

IEP Team meetings

- Attendance of a member of the IEP team at an IEP meeting may
 - o not be necessary, with LEA and parent agreement, if the member's area of the curriculum or related services is not being discussed or modified, or
 - may be excused, with written consent of LEA and parent, if the member submits
 writing to the parents and the team, input to the development of the IEP prior to the
 meeting.
- Upon parent request the LEA must invite an early intervention (Part C) representative to the initial IEP meeting for a child eligible for preschool services.
- IEP team meetings and placement meetings may be conducted *using alternative means* of *participation* such as video conferences and conference calls with the agreement of the parent and the LEA.
- Changes to the IEP after the annual IEP meeting may be made without convening an IEP
 meeting with the agreement of the parent and the LEA by developing a written document
 to amend or modify the current IEP.

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Options for State (new)

- An SEA may apply to OSEP to participate in a pilot study to allow parents and LEAs the
 opportunity for long term planning by offering the option to write up to three year IEPs for
 students to coincide with natural transition points for the child. (Utah is not considering
 participation in this pilot study.)
- An SEA may apply to OSEP to participate in a *pilot study* on paperwork reduction that would provide waivers of some requirements and evaluate the effect of the waivers on student outcomes and family satisfaction. (602) (Utah is not currently considering participation in this pilot study.)
- An SEA may apply to participate in an option allowing parents to choose to have a child age 3 to 5 eligible for preschool special education services remain in an early intervention (Part C) program rather than enroll in an LEA preschool. (Utah is in the process of considering whether to take this option.)
- An SEA may set aside up to 1% of federal IDEA funds for a risk pool to assist LEAs with the high costs of some students' programs. (Utah is planning to utilize this option.)

Transition (School to post-school) (614(d)(1)(A)(VIII) (III.I-J)

- Begin not later than the first IEP to be in effect when the child turns 16 must include measurable post secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and transition services (including courses of study) needed to reach those goals.
- Upon exiting the public school system the LEA shall provide the student a summary of student's academic achievement and functional performance including recommendations on how to assist the student in meeting the student's post secondary goals.

Discipline (615(k)) (V.A-Q)

- In determining whether behavior is a manifestation of a child's disability the relevant members of the IEP team and the parent must determine if the conduct was caused by or was in direct and substantial relationship to the child's disability or a direct result of the LEAs failure to implement the IEP.
- A school may remove a child with a disability to an alternative educational setting for not more than 45 school days if the child has a weapon, drugs, or inflicts serious bodily injury upon another person at school.
- If an appeal of the manifestation determination has been made by the parent or the LEA believes maintaining current placement is dangerous, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer.
- An expedited hearing shall occur within 20 school days of the date that the hearing is requested and a determination or placement shall be made within 10 school days after the hearing.
- An LEA is considered to have knowledge that a child has a disability if, before disciplinary
 action is taken, a parent expressed concern in writing to administrator or teacher or
 requested an evaluation of the child or if a teacher expressed specific concerns about a
 pattern of behavior to an administrator.
- School personnel may consider unique circumstances on a case by case basis when ordering a change in placement of the same type and duration as for a student without disabilities for a child with a disability who violates a code of student conduct, if the conduct is not a manifestation of the child's disability.
- When a student's behavior is a manifestation of a disability, IEP team will conduct a FBA and develop a BIP and return the student to the placement from which he was removed, *unless* the parent and LEA agree to a change of placement as part of modifications to the BIP.

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Procedural Safeguards (615) (IV.A-W)

- Parents must be provided procedural safeguards only once a year, except that safeguards
 must always be provided upon parent request, initial referral, parent request for an
 evaluation, and the first occurrence of filing a complaint.
- Procedural safeguards *must include* requirements for due process hearing request, time period in which to make a complaint, the opportunity for the agency to resolve the complaint, the availability of mediation, and the time period in which to file civil actions.
- If the parent of a student *refuses to [initial] consent* to special education and related services, the *LEA may not use due process* to provide services.
- The LEA must *make reasonable efforts* to obtain informed consent from parents whose children are wards of the state for initial evaluation for eligibility.
- When the LEA cannot locate the parents or the parents are not known or a child is a ward of the state or an unaccompanied homeless youth, a surrogate parent must be assigned within 30 days.

Dispute Resolution (615(c)(2)) (IV.G-Q)

- The SEA or LEA must make *mediation available at any time to resolve disputes involving any matter.*
- An LEA or SEA may establish procedures that provides parents and schools the opportunity to meet with a disinterested party, when they choose not to use the mediation process.
- Resolution of issues in a due processing hearing request resulting from mediation shall be
 contained in a *legally binding agreement* that specifies that all discussions are confidential,
 may not be used as evidence in subsequent proceedings, is signed by both the parent and
 the LEA, and *is enforceable in any court*.
- Upon a request for due process hearing the *LEA must convene a resolution session* with the parents and the relevant members of the IEP team in an attempt to resolve the issues in dispute unless the parents and LEA agree in writing to waive such a session or agree to use the mediation process. If the due process issues are not resolved to the satisfaction of the parents within 30 days, the due process hearing timeline commences.
- Either the parent or public agency may request a due process hearing with respect to identification, evaluation, or placement or the provision of FAPE provided the alleged violation occurred not more than two years before the date of the complaint.
- The statute of limitations does not apply if the parent was prevented from requesting a hearing.
- Notice of a due process request must be provided to all parties concerned and a copy
 forwarded to the SEA. The law contains specific requirements for the content of the notice,
 and it shall be considered sufficient unless the party receiving the notice notifies the hearing
 officer in writing. The notice shall not be altered to raise additional issues later unless both
 parties agree otherwise. Separate issues require separate due process filings.
- Additional qualifications for due process hearing officers in terms of knowledge and abilities are specified under the law.
- Hearing officer decisions must be made on substantive determination of whether the child received FAPE, unless a procedural inadequacy impeded the child's right to free and appropriate public education or significantly impeded the parents' opportunity to participate in the decision making processes.
- Either party in a due process hearing has 90 days from the date of the hearing officers' decision to bring a civil action.
- The court may award reasonable attorney's fees to a prevailing party if a request for a due process hearing is frivolous, unreasonable, or without foundation or if an attorney continues to litigate after the litigation became frivolous or without foundation or if the action was presented for any improper purpose.

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Transfer Students (614(d)(2)(C)) (III.C.2-3)

- When a child with a disability transfers between school districts within the same state with an IEP in effect, the new LEA must provide FAPE including services comparable to the previous district's IEP until it adopts the previous IEP or develops a new IEP.
- When a child with a disability transfers from a school district in another state, the new LEA must provide FAPE including services comparable to the previous IEP until the LEA conducts an evaluation, if necessary, and develops a new IEP.
- The previous school must take steps to promptly respond to a request for transfer of the child's school records.

Private Schools (612(a)(10) (III.T-V)

- For students placed by parents in private schools, the school district within which the private school is located is responsible for consultation, child find, evaluation, eligibility, and any services the district, in consultation with the private school, determines it will provide.
- The school district within which the private school is located is responsible to maintain and provide to the SEA the number of children evaluated, the number of children eligible, the number of children served under IDEA based on child find activities.
- The school district within which the private school is located shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the development of special education and related services regarding: child find and equitable participation, who will provide services, how services will be apportioned if funds are not sufficient to serve all children, how and when these decisions will be made, and, in the case of disagreement between the district and the private school, how the district will provide the private school a written explanation of reasons services are not provided.
- The LEA shall obtain a written affirmation from the private school representatives that a timely and meaningful consultation has occurred. A private school official has the right to complain to the SEA if such consultation did not occur.

Terminology

| BIP FAPE | Behavior intervention plan Free appropriate public education | IEP LEA | Individual education program Local education agency: a school district or a charter school |
|-------------|--|------------|--|
| FBA | Functional behavior assessment | OSEP | Office of Special Education Programs: federal government |
| IDEA | Individuals with Disabilities Education Act | SEA | State education agency: USOE |

Anticipated Timeline for IDEA 2004 Rules Development

December 2004 Federal Statute
June 2005 Draft Regulations
December 2005 Final Regulations

June 2006 Utah State Special Education Rules

The development of this document was a cooperative project of the Utah Parent Center, the Utah State Office of Education, the Utah Special Education Advisory Panel, and others.

For more information or questions, contact your local school district special education director, the Utah Parent Center at 801-272-1051 or the Utah State Office of Education at 801-538-7587.